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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/807,617	05/14/2001	Klaus Walter	265-97	2093
23117	7590	02/11/2004	EXAMINER	
NIXON & VANDERHYE, PC 1100 N GLEBE ROAD 8TH FLOOR ARLINGTON, VA 22201-4714			DONNELLY, JEROME W	
			ART UNIT	PAPER NUMBER
			3764	
			DATE MAILED: 02/11/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/807 67

Applicant(s)

Klaus

Examiner

Jerome W Donnelly

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ___ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10-17-03
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-46 is/are pending in the application.
- 4a) Of the above claim(s) ___ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ___ is/are allowed. 1-
- 6) ☒ Claim(s) ___ is/are rejected. 1-28, 30-33, 38-42, 44, 45
- 7) ☒ Claim(s) ___ is/are objected to. 29, 34, 35, 36, 37, 43 and 46
- 8) ☐ Claim(s) ___ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ___ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ___ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____

Jerome W. Donnelly
Primary Examiner

Response to applicants remarks dated 10-17-03

The examiner is in agreement that the rejection in the previous office action was incorrect in that it should have been presented as a 35 USC 103 rejection.

The examiner however believes that the content of the rejection is proper as would be submitted in a 35 USC 103 rejection, as does the applicant's representative, which has argued the rejections content as if presented as a 103 rejection.

The applicant's representative has also decided to move the prosecution forward past the oversight by canceling all claims and presenting new claims for examination.

The examiner will respond to the applicant's arguments by thoroughly addressing each limitation of the newly submitted claims.

Claims 29, 34, 35, 36, 37, 43 and 46 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 25-27, 30, 32 and 40-42 are rejected under 35 U.S.C. 102(b) as being anticipated by Zane.

Zane discloses a device comprising a Frame said Frame includes actuating struts (15) a support (12) coupled between said struts, the support is capable of defining a swivel axis, a function unit 22 and 23 including a pair of counter support 22 and 23

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which are positions adjacent the shoulders and operation elements (19), said operation is disposed under support.

In regard to claim 42 elements 22 and 23 comprise loops.

Claims 1, 27, 28-33, 39, 40, 44 and 45 are rejected under 35 U.S.C. 102(b) as being anticipated by Fairchild Jr.

Fairchild disclose a device comprising a frame, actuating struts 22 and 24, a support 100 coupled between said struts, the support defining a swivel axis, a function unit 10, 12 including a pair of counter supports (16) and operation elements 10 and 12, said operation elements including grasping sections 32 and 34.

In regard to claim 29 release cards 50 and 52 are attached to the grasping areas of the operation elements.

In regard to claim 32 note that actuating struts are arc-shaped.

In regard to claim 39 and 40 Fairchild Jr discloses several struts connected between activating struts 22 and 24.

In regard to claim 27 note that elements 10 and 12 extend forward of elements 22 and 24.

In regard to claim 33 notes that the operation elements 10 and 12 have acres at their top ends and bottom ends.

In regard to claim 44 note that struts 22 and 24 are straight and that elements 10 and 12 transition therefrom and bent area to form an extension therefrom.

Claim38 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear as to the meaning of "attachable struts".

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to Jerome Donnelly at telephone number 308-2668.

Donnelly/DI

January 20, 2004